

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments,  
FM Broadcast Stations  
(Rose Hill, Trenton, and Aurora  
North Carolina) )

) MM Docket No. 95-88

) RM-8641 DOCKET FILE COPY ORIGINAL

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To: Chief, Allocations Branch

**REPLY TO OPPOSITION TO MOTION TO  
ACCEPT RESPONSIVE PLEADING**

Aurora Broadcasting ("AB"), through counsel, and pursuant to §1.45 of the Commission's Rules, hereby submits its Reply to the "Opposition to Motion to Accept Responsive Pleading" filed by Duplin County Broadcasters ("DCB") on October 5, 1995, in the above docketed rule making proceeding.<sup>1</sup> In support whereof, the following is shown:

By Notice of Proposed Rule Making, Rose Hill and Trenton, North Carolina ("NPRM"), 10 FCC Rcd 6611 (1995), the Commission considered the proposal of DCB to reallocate FM Channel 284A from Rose Hill to Trenton, North Carolina, as a Class C2 allotment, with the modification of the license of WBSY, Rose Hill, to operate at Trenton on Channel 284C2. On August 10, 1995, AB filed "Comments and Counterproposal of Aurora Broadcasting," proposing to allocate Channels 283A to Aurora, North Carolina, instead of the allotment of Channel 284C2 to Trenton.

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<sup>1</sup> AB's Reply is timely filed pursuant to §1.45 of the Commission's Rules within five days of the filing of DCB's Opposition (including three additional days for mailing time and not counting Commission "holidays") or by October 18, 1995.

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On September 5, 1995, DCB filed a Reply to AB's Counterproposal. In its Reply, DCB proposed the alternative allotment of Channel 221A to Aurora, North Carolina, in lieu of Channel 283A, as requested by AB. AB reviewed DCB's proposed alternative allotment and determined that it was not technically feasible to allot Channel 221A to Aurora. On September 20, 1995, AB filed a "Response to Reply of Duplin County Broadcasters to Counterproposal" to note that DCB's proposal to allot Channel 221A at Aurora was blocked by the earlier-filed application of Ocracoke Broadcasters ("OB") for one-step upgrade of WAHL, Ocracoke, North Carolina, filed on July 28, 1995. Pursuant to the Commission's policy, as announced in Conflicts Between Applications and Petitions For Rulemaking, 7 FCC Rcd 4917 (1992), DCB's proposed allotment of Channel 221A at Aurora was unacceptable since it was filed after the WAHL one-step upgrade application.

In its Opposition, DCB contends that the WAHL one-step upgrade application should not prevent consideration of its alternative allotment proposal of Channel 221A for Aurora. DCB alleges that the WAHL one-step upgrade application is defective. DCB states that the upgraded facility for WAHL proposed in the one-step application will not place a 70 dBu signal over WAHL's license community of Ocracoke. DCB assumes that this will lead to the ultimate dismissal of OB's application and, thus, clear the way for DCB's alternative allotment proposal. Even assuming that DCB is correct and OB's application contains an engineering defect, it would not constitute a tenderability defect that would result in the automatic return of OB's application. See, Modification of FM Processing Rules, 7 FCC Rcd 5074, Appendix C (1992). If such a defect actual exists, OB will be permitted to amend its application to resolve the problem. Id. OB's application will remain on file and will

continue to block DCB's alternative allotment for Aurora. Whether OB's one-step application contains an engineering defect does not change the fact that DCB submitted a flawed Counterproposal that is not acceptable for filing. Counterproposals must be technically sufficient at the time they are filed. Since DCB's proposed alternative allotment of Channel 221A for Aurora did not protect the earlier-filed WAHL one-step upgrade application at the time it was filed, it was not acceptable for filing and cannot be considered by the Commission.

**WHEREFORE**, the above facts considered, Aurora Broadcasting, hereby respectfully requests that the Commission accept its "Response to Reply of Duplin County Broadcasters to Counterproposal" and deny DCB's proposed allotment of Channel 221A at Aurora, North Carolina.

Respectfully submitted,

**AURORA BROADCASTING**

By: 

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October 18, 1995

AURORA\DLFREPOPP

**CERTIFICATE OF SERVICE**

I, Denise Felice, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 18th day of October, 1995, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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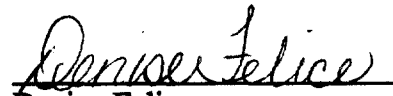
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